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Attorneys for Defendants
CHARLES FREDERICK HARTZ dba PAUL'S
SPARKLE CLEANERS and CHARLES F. HARTZ

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PALMTREE ACQUISITION CORPORATION, Case No. CV 08 3168 MHP
a Delaware corporation.

Plaintiff,

**STIPULATION AND [PROPOSED]
ORDER RE ANSWERS TO FIRST
AMENDED COMPLAINT**

VS.

MICHAEL R. NEELY, an individual; PERRY J. NEELY, an individual; GARY NEELY, an individual; MICHAEL R. NEELY, PERRY J. NEELY and GARY NEELY dba MIKE'S ONE HOUR CLEANERS; CHARLES FREDERICK HARTZ dba PAUL'S SPARKLE CLEANERS; CHARLES F. HARTZ, an individual; MULTIMATIC CORPORATION, a New Jersey corporation; WESTERN STATES DESIGN, a California corporation; MCCORDUCK PROPERTIES LIVERMORE, LLC, a Delaware limited liability company individually and as the successor to JOHN MCCORDUCK, KATHLEEN MCCORDUCK, PAMELA MCCORDUCK, SANDRA MCCORDUCK MARONA, and IMA FINANCIAL CORPORATION, a California corporation; STARK INVESTMENT COMPANY, a California general partnership; GRUBB & ELLIS REALTY INCOME TRUST, LIQUIDATING TRUST, a California trust; Northrop Grumman Systems Corporation, a Delaware corporation, and DOES 1-20, inclusive.

Defendants.

AND RELATED ACTIONS

RECITALS

A. Plaintiff Palmtree Acquisition Corporation filed this action (“Action”) as a “reopener” of a prior action that was conditionally settled, which prior action was filed on February 3, 1993 in the United States District Court for the Northern District of California, entitled *Grubb & Ellis Realty Trust v. Catellus Development Corp., et al.*, and related cross-actions, Case No. C93-0383 SBA (“Prior Action”).

B. In the course of litigating the Prior Action, the parties to the Prior Action engaged in discovery relating to the factual background, ownership and operations of certain of the parties to the Prior Action and their conduct which may have resulted in the PCE contamination.

C. On February 7, 1994, the parties to the Prior Action entered into a settlement agreement (“1994 Settlement”). On February 17, 1994, this Court entered an order approving the settlement agreement and dismissing the Prior Action.

D. Pursuant to the 1994 Settlement, the parties agreed that the release amongst each other would not extend to:

...any claims, causes of action, obligations, damages, expenses or liabilities resulting from (1) claims or cross-claims arising from actions brought by third parties after the date of this agreement relating to PCE [perchloroethylene] contamination at the properties, or (2) actions by governmental agencies requiring cleanup of PCE contamination or seeking recovery of governmental response costs for the cleanup of PCE contamination: (a) of the deeper aquifer as defined in Paragraph 5 of SCO [Site Cleanup Order], or (b) in the form of DNAPLs, defined as PCE found in pore-water concentrations which exceed their effective solubilities as measured using the residual DNAPL detection method of Feenstra, Mackay, and Cherry (1991). The limitations expressed in the preceding sentence on the release contained in this paragraph are referred to as “the Paragraph 9 reopeners”.

28 E. On March 17, 2008, and March 21, 2008, the California Regional Water

1 Quality Control Board (“RWQCB”), a governmental agency, sent letters to certain of the
 2 defendants and the plaintiff, and/or their predecessors, requiring the further investigation and
 3 monitoring of PCE contamination which potentially impacted the deeper aquifer that may be
 4 in the form of DNAPLs, thereby triggering the “Paragraph 9 reopeners” (“RWQCB
 5 Directives”). As a result of the RWQCB Directives, certain parties to the prior 1994
 6 Settlement, made a demand upon other parties asserting that the Paragraph 9 reopeners applied
 7 and demanding that they respond to the RWQCB Directives.

8 F. On July 1, 2008, plaintiff Palmtree Acquisition Corporation, the successor to
 9 one of the 1994 Settlement parties, Catellus Development Corporation, filed a Complaint for
 10 CERCLA Cost Recovery, Damages and Declaratory Relief, seeking contribution and
 11 damages (“the Original Complaint”) against certain of other parties to the 1994 Settlement,
 12 pursuant to the Paragraph 9 reopeners.

13 G. Defendant The Grubb & Ellis Realty Income Trust, Liquidating Trust
 14 (“GERIT”) has not appeared, is not represented by counsel, and claims to have dissolved and
 15 to no longer exist, and thus is not a party to this stipulation.

16 H. Third Party Plaintiffs The Kirberg Corporation and Stark Investment
 17 Company have asserted claims against the beneficiaries of the GERIT (Document No. 64).
 18 The beneficiaries are alleged to have received improper distributions from the GERIT.

19 I. On September 15, 2008 Magistrate Judge Edward M. Chen signed a stipulation
 20 and order (Document No. 13) providing that, among other things, the defendants were
 21 deemed to have denied each and every allegation in the Original Complaint, that defendants
 22 were deemed to have filed crossclaims against each other for contribution and indemnity, and
 23 deemed to have filed counterclaims for contribution and indemnity against Plaintiff.

24 J. Subsequent to the filing of the Original Complaint, certain parties agreed to
 25 cooperate in jointly retaining an environmental consultant to respond to the RWQCB
 26 Directives. The environmental consultant has been engaged with the RWQCB and the parties
 27 have made substantial progress towards meeting the demands of the RWQCB.

28 K. Subsequent to the filing of the Original Complaint, the parties participated in

1 meditation with Timothy Gallagher, Esq., during which the parties engaged in an in depth
2 discussion and investigation relating to the factual background, ownership and operations of
3 the parties and their conduct which may have resulted in the PCE contamination.

4 L. On July 14, 2010 plaintiff Palmtree Acquisition Corporation filed its First
5 Amended Complaint (the "Current Action" or "FAC"), adding Northrop Grumman Systems
6 Corporation ("Northrop Grumman") as a party.

7 M. Northrop Grumman and the other parties to this stipulation reached a
8 settlement of their respective claims against one another. Northrop Grumman was named as
9 a party so that the parties could make a good faith settlement application to the Court. If the
10 Court finds that the settlement was entered into in good faith, Northrop Grumman will be
11 dismissed as a party.

12 N. The parties to this Current Action, who were defendants in the Prior Action,
13 filed answers in the Prior Action.

14 O. The responses and defenses in this Current Action should be substantially
15 similar to those raised by the parties in the Prior Action.

16 P. The responses and defenses of Northrop Grumman should be substantially
17 similar to those raised by the parties named in the Prior Action.

18 Therefore, in the interest of judicial economy, pursuant to Local Rule 6-1(b) and 7-12,
19 the parties below hereby agree and stipulate as follows:

20 **STIPULATION**

21 1. Each of the defendants in this Current Action, who have signed this stipulation
22 and proposed order, shall be deemed to have denied each and every allegation in the FAC.

23 2. Each of the defendants to this Current Action reserves the right to supplement
24 its response to the FAC, and may file an answer and separate crossclaims or counterclaims at
25 a later date, but no later than 60 days following the conclusion of mediation with mediator
26 Timothy Gallagher, currently underway. Mediation will be concluded at such time as: (a) a
27 settlement is reached, or (b) the mediator issues a letter concluding that a settlement has not
28 been reached and the mediation is concluded.

1 3. Each of the defendants to this Current Action further reserves the right to file
2 crossclaims against other third parties who are not parties to this Current Action, and the
3 parties reserve any and all rights against such third parties. Each party reserves its right to
4 file crossclaims against parties named in the First Amended Third Party Complaint filed by
5 third party plaintiffs Stark Investment Company and the Kirrberg Corporation. The plaintiff
6 reserves the right to amend the complaint to add or remove allegations, to add new parties or
7 to make any other changes consistent with the Federal Rules of Civil Procedure.

8 Wherefore, the Parties respectfully request that the Court approve this Stipulation.

9 Dated: August 2, 2010

10 COX, CASTLE & NICHOLSON LLP

11 By: /s/ Peter M. Morrisette
12 Stuart I. Block
13 Peter M. Morrisette
14 Attorneys for Plaintiff
15 PALMTREE ACQUISITION
16 CORPORATION, a Delaware corporation
17 f/k/a Catellus Development Corporation

18 Dated: July 30, 2010

19 BASSI EDLIN HUIE & BLUM LLP

20 By: /s/ Noel Edlin
21 Noel Edlin
22 Attorneys for Defendants
23 MICHAEL R. NEELY, an individual;
24 PERRY J. NEELY, an individual; GARY
25 NEELY, an individual; MICHAEL R.
26 NEELY, PERRY J. NEELY and GARY
27 NEELY dba MIKE'S ONE HOUR
28 CLEANERS

29 Dated: July 30, 2010

30 GONSALVES & KOZACHENKO

31 By: /s/ Selena P. Ontiveros
32 Selena P. Ontiveros
33 Attorneys for Defendant
34 STARK INVESTMENT COMPANY, a
35 California general partnership

1 Dated: July 31, 2010

DONGELL LAWRENCE FINNEY LLP

2 By: /s/ Thomas F. Vandenburg
3 Thomas F. Vandenburg
4 Attorneys for Defendant
5 MULTIMATIC CORPORATION, a New
6 Jersey corporation

7 Dated: July 30, 2010

ROGERS JOSEPH O'DONNELL

8 By: /s/ Robert C. Goodman
9 Robert C. Goodman
10 Attorneys for Defendant
11 CHARLES FREDERICK HARTZ dba
12 PAUL'S SPARKLE CLEANERS;
13 CHARLES F. HARTZ, an individual

14 Dated: July 30, 2010

15 McKENNA LONG & ALDRIDGE LLP

16 By: /s/ Christian Volz
17 Christian Volz
18 Attorneys for Defendant
19 NORTHROP GRUMMAN SYSTEMS
20 CORPORATION

21 Dated: July 30, 2010

22 GORDON WATROUS RYAN
23 LANGLEY BRUNO & PALTENGHI
24 INC.

25 By: /s/ Bruce Clinton Paltenghi
26 Bruce Clinton Paltenghi
27 Attorneys for Defendant
28 McCORDUCK PROPERTIES
LIVERMORE, LLC, a Delaware limited
liability company individually and as the
successor to JOHN McCORDUCK,
KATHLEEN McCORDUCK, PAMELA
McCORDUCK, SANDRA McCORDUCK
MARONA, and IMA FINANCIAL
CORPORATION, a California corporation

29 Dated: August 2, 2010

30 FOLEY MCINTOSH FREY & CLAYTOR

31 By: /s/ Jim Claytor
32 Jim Claytor
33 Attorneys for Defendant
34 WESTERN STATES DESIGN, a
35 California corporation

1 Dated: August 2, 2010

THE COSTA LAW FIRM

2 By: /s/ Daniel P. Costa
3 Daniel P. Costa
4 Attorneys for Defendant
5 STARK INVESTMENT COMPANY

6 IT IS SO ORDERED

7 Dated: 8/3/2010



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